

NOTE: CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NICOLAS TORRENT, on Behalf of
Himself and All Others Similarly
Situating,

Plaintiff,

v.

THIERRY OLLIVIER, NATIERRA,
and BRANDSTORM, INC.,

Defendants.

Case No.: 2:15-cv-02511-DDP-JPR

CLASS ACTION

PROTECTIVE ORDER

District Judge: Dean D. Pregerson
Courtroom: 3

Magistrate Judge: Jean P. Rosenbluth
Courtroom: A

Trial Date: None Set

1. **A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that

1 are entitled to confidential treatment under the applicable legal principles. The
2 parties further acknowledge, as set forth in Section 12.3, below, that this
3 Stipulated Protective Order does not entitle them to file confidential information
4 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
5 and the standards that will be applied when a party seeks permission from the
6 court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer lists, pricing lists,
9 distributor lists, market research, sales data, financial figures, import data, and
10 other valuable research, development, commercial, financial, technical and/or
11 proprietary information for which special protection from public disclosure and
12 from use for any purpose other than prosecution of this action is warranted. Such
13 confidential and proprietary materials and information consist of, among other
14 things, confidential business or financial information, information regarding
15 confidential business practices, or other confidential research, development, or
16 commercial information (including information implicating privacy rights of
17 third parties), information otherwise generally unavailable to the public, or which
18 may be privileged or otherwise protected from disclosure under state or federal
19 statutes, court rules, case decisions, or common law. Disclosure of such
20 information would likely result in immediate and irreparable harm.

21 Accordingly, to expedite the flow of information, to facilitate the prompt
22 resolution of disputes over confidentiality of discovery materials, to adequately
23 protect information the parties are entitled to keep confidential, to ensure that the
24 parties are permitted reasonable necessary uses of such material in preparation
25 for trial, to address their handling at the end of the litigation, and serve the ends
26 of justice, a protective order for such information is justified in this matter. It is
27 the intent of the parties that information will not be designated as confidential for
28 tactical reasons and that nothing be so designated without a good faith belief that

1 it has been maintained in a confidential, non-public manner, and there is good
2 cause why it should not be part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: This pending above referred federal law suit.

5 2.2 Challenging Party: A Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless
8 of how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information
14 or items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information,
17 regardless of the medium or manner in which it is generated, stored, or
18 maintained (including, among other things, testimony, transcripts, and tangible
19 things), that are produced or generated in formal or informal disclosures,
20 deposition testimony, responses to discovery, or otherwise provided or produced
21 during the course of this litigation.

22 2.7 Expert: a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who has been retained by a Party or its counsel
24 to serve as an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this
26 Action. House Counsel does not include Outside Counsel of Record or any other
27 outside counsel.

28 2.9 Non-Party: any natural person, partnership, corporation, association,

1 or other legal entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a
3 party to this Action but are retained to represent or advise a party to this Action
4 and have appeared in this Action on behalf of that party or are affiliated with a
5 law firm which has appeared on behalf of that party, and includes support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and
8 their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying, videotaping, translating, preparing exhibits
13 or demonstrations, and organizing, storing, or retrieving data in any form or
14 medium) and their employees and subcontractors.

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as "CONFIDENTIAL."

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by Parties or their Counsel that might reveal Protected Material.

25 Any use of Protected Material at trial shall be governed by the orders of the trial
26 judge. This Order does not govern the use of Protected Material at trial.

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28 4. DURATION

1 Even after final disposition of this litigation, the confidentiality obligations
2 imposed by this Order shall remain in effect until a Designating Party agrees
3 otherwise in writing or a court order otherwise directs. Final disposition shall be
4 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
5 with or without prejudice; and (2) final judgment herein after the completion and
6 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
7 including the time limits for filing any motions or applications for extension of
8 time pursuant to applicable law.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for**
11 **Protection.** Each Party or Non-Party that designates information or items for
12 protection under this Order must take care to limit any such designation to
13 specific material that qualifies under the appropriate standards. The Designating
14 Party must designate for protection only those parts of material, documents,
15 items, or oral or written communications that qualify so that other portions of the
16 material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited.
19 Designations that are shown to be clearly unjustified or that have been made for
20 an improper purpose (e.g., to unnecessarily encumber the case development
21 process or to impose unnecessary expenses and burdens on other parties) may
22 expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that
24 it designated for protection do not qualify for protection, that Designating Party
25 must promptly notify all other Parties that it is withdrawing the inapplicable
26 designation.

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28 **5.2 Manner and Timing of Designations.** Except as otherwise provided

1 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
2 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
3 for protection under this Order must be clearly so designated before the material
4 is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the
12 protected portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for
14 inspection need not designate them for protection until after the inspecting Party
15 has indicated which documents it would like copied and produced. During the
16 inspection and before the designation, all of the material made available for
17 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
18 identified the documents it wants copied and produced, the Producing Party must
19 determine which documents, or portions thereof, qualify for protection under this
20 Order. Then, before producing the specified documents, the Producing Party
21 must affix the “CONFIDENTIAL legend” to each page that contains Protected
22 Material. If only a portion or portions of the material on a page qualifies for
23 protection, the Producing Party also must clearly identify the protected portion(s)
24 (e.g., by making appropriate markings in the margins).

25 (b) for testimony given in depositions, that the Designating Party
26 identify the Disclosure or Discovery Material on the record, before the close of
27 the deposition, all protected testimony.

28 (c) for information produced in some form other than documentary

1 and for any other tangible items, that the Producing Party affix in a prominent
 2 place on the exterior of the container or containers in which the information is
 3 stored the legend "CONFIDENTIAL." If only a portion or portions of the
 4 information warrants protection, the Producing Party, to the extent practicable,
 5 shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 7 failure to designate qualified information or items does not, standing alone,
 8 waive the Designating Party's right to secure protection under this Order for such
 9 material. Upon timely correction of a designation, the Receiving Party must
 10 make reasonable efforts to assure that the material is treated in accordance with
 11 the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 14 designation of confidentiality at any time that is consistent with the Court's
 15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 17 resolution process under Local Rule 37.1, *et seq.*

18 6.3 Burden on Challenges. The burden of persuasion in any such
 19 challenge proceeding shall be on the Designating Party. Frivolous challenges,
 20 and those made for an improper purpose (e.g., to harass or impose unnecessary
 21 expenses and burdens on other parties) may expose the Challenging Party to
 22 sanctions. Unless the Designating Party has waived or withdrawn the
 23 confidentiality designation, all parties shall continue to afford the material in
 24 question the level of protection to which it is entitled under the Producing Party's
 25 designation until the Court rules on the challenge.

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28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that
2 is disclosed or produced by another Party or by a Non-Party in connection with
3 this Action only for prosecuting, defending, or attempting to settle this Action.
4 Such Protected Material may be disclosed only to the categories of persons and
5 under the conditions described in this Order. When the Action has been
6 terminated, a Receiving Party must comply with the provisions of section 13
7 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at
9 a location and in a secure manner that ensures that access is limited to the
10 persons authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party,
13 a Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action,
16 as well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this Action;

18 (b) the officers, directors, and employees (including House Counsel)
19 of the Receiving Party to whom disclosure is reasonably necessary for this
20 Action;

21 (c) Experts (as defined in this Order) of the Receiving Party to
22 whom disclosure is reasonably necessary for this Action and who have signed
23 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and
27 Professional Vendors to whom disclosure is reasonably necessary for this Action
28 and who have signed the “Acknowledgment and Agreement to Be Bound”

(Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served
3 with the subpoena or court order shall not produce any information designated in
4 this action as "CONFIDENTIAL" before a determination by the appropriate
5 court unless the Party has obtained the Designating Party's permission or a court
6 so orders. The Designating Party shall bear the burden and expense of seeking
7 protection in that court of its confidential material and nothing in these
8 provisions should be construed as authorizing or encouraging a Receiving Party
9 in this Action to disobey a lawful directive from another court.

10 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
11 PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced
13 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
14 information produced by Non-Parties in connection with this litigation is
15 protected by the remedies and relief provided by this Order. Nothing in these
16 provisions should be construed as prohibiting a Non-Party from seeking
17 additional protections.

18 (b) In the event that a Party is required, by a valid discovery request,
19 to produce a Non-Party's confidential information in its possession, and the Party
20 is subject to an agreement with the Non-Party not to produce the Non-Party's
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the
23 Non-Party that some or all of the information requested is subject to a
24 confidentiality agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the
26 Stipulated Protective Order in this Action, the relevant discovery request(s), and
27 a reasonably specific description of the information requested; and

28 (3) make the information requested available for inspection

1 by the Non-Party, if requested.

2 (c) If the Non-Party fails to seek a protective order from this
 3 court within 14 days of receiving the notice and accompanying information, the
 4 Receiving Party may produce the Non-Party's confidential information
 5 responsive to the discovery request. If the Non-Party timely seeks a protective
 6 order, the Receiving Party shall not produce any information in its possession or
 7 control that is subject to the confidentiality agreement with the Non-Party before
 8 a determination by the court. Absent a court order to the contrary, the Non-Party
 9 shall bear the burden and expense of seeking protection in this court of its
 10 Protected Material.

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has
 13 disclosed Protected Material to any person or in any circumstance not authorized
 14 under this Stipulated Protective Order, the Receiving Party must immediately
 15 (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
 16 use its best efforts to retrieve all unauthorized copies of the Protected Material,
 17 (c) inform the person or persons to whom unauthorized disclosures were made of
 18 all the terms of this Order, and (d) request such person or persons to execute the
 19 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
 20 Exhibit A.

21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
 24 inadvertently produced material is subject to a claim of privilege or other
 25 protection, the obligations of the Receiving Parties are those set forth in Federal
 26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 27 whatever procedure may be established in an e-discovery order that provides for
 28 production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of
2 disclosure of a communication or information covered by the attorney-client
3 privilege or work product protection, the parties may incorporate their agreement
4 in the stipulated protective order submitted to the court.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of
7 any person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in
11 this Stipulated Protective Order. Similarly, no Party waives any right to object on
12 any ground to use in evidence of any of the material covered by this Protective
13 Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material
16 may only be filed under seal pursuant to a court order authorizing the sealing of
17 the specific Protected Material at issue. If a Party's request to file Protected
18 Material under seal is denied by the court, then the Receiving Party may file the
19 information in the public record unless otherwise instructed by the court.

20 13. FINAL DISPOSITION

21 After the final disposition of this Action, as defined in paragraph 4, within
22 60 days of a written request by the Designating Party, each Receiving Party must
23 return all Protected Material to the Producing Party or destroy such material. As
24 used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of
26 the Protected Material. Whether the Protected Material is returned or destroyed,
27 the Receiving Party must submit a written certification to the Producing Party
28 (and, if not the same person or entity, to the Designating Party) by the 60 day

1 deadline that (1) identifies (by category, where appropriate) all the Protected
2 Material that was returned or destroyed and (2) affirms that the Receiving Party
3 has not retained any copies, abstracts, compilations, summaries or any other
4 format reproducing or capturing any of the Protected Material. Notwithstanding
5 this provision, Counsel are entitled to retain an archival copy of all pleadings,
6 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work
8 product, and consultant and expert work product, even if such materials contain
9 Protected Material. Any such archival copies that contain or constitute Protected
10 Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION).

12 14. VIOLATIONS

13 Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or monetary
15 sanctions.

16 Pursuant to the stipulation of the parties, the court grants the Stipulated
17 Protective Order.

18 **IT IS SO ORDERED.**

19 DATED: May 18, 2015



20 Jean P. Rosenbluth,
21 United States Magistrate Judge